

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	Chapter 7
)	BKY Case No. 04-44918-RJK
Fred Arthur Fedora,)	
)	
Debtor(s))	<u>VERIFIED NOTICE OF HEARING</u>
)	<u>AND MOTION OBJECTING TO</u>
)	<u>CLAIMED EXEMPT PROPERTY</u>

TO: The United States Bankruptcy Court, the United States Trustee, the debtor, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002 (none):

1. Julia A. Christians, Trustee herein, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005, and Local Rule 1071-1. This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. This proceeding arises under 11 U.S.C. §522 and Local Rule 4003-1(a).

3. The Court will hold a hearing on this objection on November 3, 2004, at 9:30 a.m. in Courtroom No. 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

4. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **If no**

response is timely served and filed, the Court may grant the relief requested without a hearing.

5. The undersigned trustee hereby objects to the debtor's claim that the following property is exempt under the applicable exemption statute: Funds on deposit at Wakota Federal Credit Union (Debtor failed to disclose the amount); 1989 Ford Aerostar vehicle, listed at a value of \$200.00; and, \$1,710.83 garnished by Liberty Credit Services.

6. The objection is made for the following reason: Debtor claimed the deposits and garnished funds exempt pursuant to Minn. Stat. §550.37, subd. 13. However, said statute does not provide an exemption for deposits absent a showing by Debtor that he can trace said deposits to wages and, even then, only in a partial amount. Further, the statute does not cover previously garnished funds in any amount. The exemption effect of §550.37, subd. 13 was already applied by operation of the statute to determine the amount subject to seizure, which is the amount held by the levying creditor. If the funds had been exempt under subd. 13, they could not have been garnished. As to the vehicle, the debtor claimed two vehicles exempt under Minn. Stat. §550.37, subd. 12a. A debtor may only claim one vehicle exempt under the statute. *See*, Minn. Stat. §550.37, subd. 12a. The Aerostar is the vehicle of lesser value and the trustee presumes the debtor would prefer to assert his exemption in the more valuable vehicle, but reserves her rights to claim whichever of the vehicles Debtor does not exempt.

Dated: October 18, 2004

/e/ Julia A. Christians
Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

Julia A. Christians, being duly sworn, says that she is the Chapter 7 Trustee in this action, that she has read this Verified Notice and Objection To Claimed Exempt Property and that it is true of her own knowledge, to the best of her information.

/e/ Julia A. Christians
Julia A. Christians

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)
Debtor.)

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on October 18, 2004, I mailed copies of the attached **Notice Of Hearing And Motion Objecting to Claimed Exempt Property; and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Fred Arthur Fedora
7438 Taylor Street NE
Fridley, MN 55432

James C. Skoog
151 Silver Lake Road
Suite 10
New Brighton, MN 55112

Executed on: October 15, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stoebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

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)	
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)	

ORDER RESPECTING OBJECTION TO CLAIM OF EXEMPTION

The objection of the trustee to the debtor's claims that the following property is exempt under Minn. Stat. § 550.37, subd. 13: Funds on deposit, 1989 Ford Aerostar vehicle and \$1,710.83 garnished by Liberty Credit, came duly on for hearing on November 3, 2004. Appearances were as noted in the record.

Upon said objection and for cause shown, and upon all the files, records, and proceedings herein,

IT IS ORDERED,

That the debtor's claims of exemption in the following assets are disallowed: all funds on deposit as of the filing date; 1989 Ford Aerostar vehicle; and, all funds garnished by Liberty Credit.

Dated:

The Honorable Robert J. Kressel
United States Bankruptcy Judge